

FILED

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

JOHN ARMSTRONG, JAMES AMAURIC, RICHARD)
PONCIANO, JACK SWENSEN, BILLY BECK,)
JUDY FENDT, WALTER FRATUS, GREGORY)
SANDOVAL, DARLENE MADISON, PETER)
RICHARDSON, STEVEN HILL, and all others)
similarly situated,)

Plaintiffs,)

v.)

No. C-94-2307 CW

PETE WILSON, Governor of the State of)
California, JOSEPH SANDOVAL, Secretary)
of Youth and Corrections Agency, JAMES)
GOMEZ, Director of the Department of)
Corrections, KYLE S. MCKINSEY, Deputy)
Director for Health Care Services,)
KEVIN CARRUTH, Deputy of the Planning)
and Construction Division, DAVID)
TRISTAN, Deputy Director of the)
Institutions Division, MARISELA MONTES,)
Deputy Director of the Parole and)
Community Services Division, JAMES)
NIELSEN, Chairman of the Board of)
Prison Terms,)

Defendants.)

REMEDIAL ORDER,
INJUNCTION, AND
CERTIFICATION OF
INTERLOCUTORY APPEAL
PURSUANT TO 28
U.S.C. § 1292(b)

The Court, having found the defendants have violated 42
U.S.C. § 12131 et seq. and § 504 of the Rehabilitation Act,
hereby enters the following Remedial Order against defendants
(except James Nielsen) pursuant to the Stipulation approved by
the Court.

The Court finds that this Remedial Order is narrowly drawn,
extends no further than necessary to correct the violation of the
rights at issue and is the least intrusive means necessary to

1 correct the violation of the rights.

2 A. Self-Evaluation, Transition Plan, Guidelines, Policies,
3 and Procedures

4 1. Within 30 days of the date this Order is filed
5 defendants shall submit the following to plaintiffs' counsel:

- 6 a. The California Department of Corrections' ("CDC")
7 program, plan and procedures for implementation of
8 its Disability Placement Plan ("DPP"). As a
9 component of the DPP, CDC will cluster class
10 members with certain disabilities at designated
11 institutions and parole facilities. Plaintiffs do
12 not object to the concentration of inmates and
13 resources at particular institutions as long as
14 such concentration is done in a manner consistent
15 with the ADA.
- 16 b. A report of CDC's self-evaluation as required by
17 28 C.F.R. §35.105.
- 18 c. CDC's transition plan as required by 28 C.F.R.
19 §35.150(d).
- 20 d. A general substantive outline setting forth the
21 methods by which class members will be provided
22 accommodations, access to programs and effective
23 communications at the designated institutions and
24 non-designated institutions.

25 2. Defendants shall also submit guidelines, policies,
26 procedures or plans regarding the following within 45 days from
27 the date this Order is filed, provided that defendants shall
28 submit any of these items as soon reasonably possible and as soon
as they are completed:

- 22 a. Disability grievance procedures;
- 23 b. Reception Center processing times for inmates with
24 disabilities;
- 25 c. Accommodations and structural features for inmates
26 with disabilities in emergency situations,
including yard incidents, fire drills, and
evacuations;
- 27 d. Allowable assistive aids for inmates with
28 disabilities in administrative segregation,
security housing units and reception centers;

- e. Accessibility features of new construction and alterations;
- f. Criteria for determining whether inmates are totally medically disabled or medically unassigned; and
- g. School and job assignments for prisoners with disabilities.

3. Within 30 days of receiving the submittals referenced in paragraphs 1 through 2 above, plaintiffs may serve written objections on defendants. Within 20 days of the receipt of plaintiffs' objections, defendants shall respond in writing. Within 10 days of the defendants' response, the parties shall meet and confer and attempt to resolve any differences. If the conference fails to resolve the parties' differences, plaintiffs may file a notice within ten days requesting an evidentiary hearing. If the plaintiffs do not object to the submittals referenced in paragraphs 1 through 2 above, or any of them, the parties shall file a stipulation and proposed order in a form substantially as that which is set forth in Appendix D.

4. Defendants shall submit guidelines, policies, procedures, plans or evaluations for all institutions that are consistent with any stipulated order under paragraph 3, above or litigated order under paragraph C, below by a date mutually agreed to by the parties, or, in the absence of an agreement, by a date set by the Court.

5. Within 45 days of receiving the guidelines, policies, procedures, plans or evaluations referenced in paragraph 4 above, plaintiffs may serve written objections on defendants. Within 30 days of the receipt of plaintiffs' objections, defendants shall

1 respond in writing. Within 15 days of the defendants' response,
2 the parties shall meet and confer and attempt to resolve any
3 differences. If the conference fails to resolve the parties'
4 differences, plaintiffs may file a notice within ten days
5 requesting an evidentiary hearing. If the plaintiffs do not
6 object to the guidelines, policies, procedures, plans or
7 evaluations referenced in paragraph 4 above, or any of them, the
8 parties shall file a stipulation and proposed order in a form
9 substantially as that which is set forth in Appendix D.

10 B. Discovery

11 Plaintiffs shall have a right to reasonable discovery after
12 September 1, 1996, of facts that are relevant to proving whether
13 defendants' guidelines, plans, policies, procedures and
14 evaluations comply with the ADA or §504.

15 C. Standards for Judicial Review

16 At any hearing held pursuant to section A above, the Court's
17 review of defendants' self-evaluation, transition plan,
18 disability placement plan and various specified guidelines,
19 plans, policies and procedures shall be limited to determining
20 whether they comply with the Americans with Disabilities Act and
21 §504 of the Rehabilitation Act of 1973. If the Court finds that
22 any aspect of the guidelines, plans, procedures or self-
23 evaluations do not comply with the ADA or §504 it may order
24 defendants to make appropriate modifications to their guidelines,
25 plans, policies, procedures or evaluations, provided that those
26 orders shall be limited to ensuring that the guidelines, plans,
27 procedures or evaluations comply with the ADA and § 504 and are
28 otherwise proper under existing law.

I D. Monitoring

2 Plaintiffs shall be entitled to reasonable access to
3 information sufficient to monitor defendants' compliance with the
4 guidelines, plans, policies and procedures that have been
5 approved by the Court. Such monitoring shall include access to
6 relevant documents, receiving reports from defendants on subjects
7 specified in § A of this Order, tours of the institutions with
8 and without their consultants and experts, interviews or
9 depositions of institution and departmental staff and scheduled
10 interviews with inmates. Brief interviews with inmates may be
11 conducted during the tours, which may be conducted no more than
12 every quarter at each institution or facility.

13 E. Enforcement

14 The Court shall retain jurisdiction to enforce the terms of
15 this Order and any order approving the guidelines, policies,
16 procedures, plans or evaluations set forth above.

17 If plaintiffs' counsel have reason to believe that
18 defendants are not complying with the terms of this Order or
19 their guidelines, policies, procedures, plans or evaluations,
20 they shall notify defendants. The parties shall attempt to
21 resolve the issue informally before pursuing any judicial remedy.

22 Upon appropriate motion the Court may issue any order
23 permitted by law, including contempt, necessary to ensure that
24 defendants comply with the guidelines, policies, procedures,
25 plans and evaluations set forth above.

26 F. Termination

27 Defendants may move the Court to vacate an order on the
28 ground that they have substantially complied with its provisions

1 and the guidelines, policies, procedures, plans and evaluations
2 for a period of two years, provided that such motion may not be
3 made earlier than one year after all the initial plans, policies,
4 procedures and evaluations have been approved by the Court. This
5 motion shall be filed pursuant to Rule 60(b)(5), of the Federal
6 Rules of Civil Procedure or other applicable law.

7 G. Attorneys Fees

8 Plaintiffs are the prevailing party and are entitled to
9 reasonable attorneys fees, litigation expenses and costs as
10 provided by 42 U.S.C. § 12205 and 29 U.S.C. § 794a for work
11 performed in this matter prior to the entry of this Remedial
12 Order and Injunction. The amount of such fees, expenses and
13 costs shall be decided upon duly noticed motion to the Court
14 according to law. Except for the determination that plaintiffs
15 are the prevailing party, defendants reserve any and all defenses
16 to a fee award.

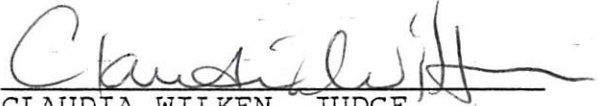
17 Plaintiffs shall be entitled to fees, litigation expenses
18 and costs as authorized by law to ensure compliance with this
19 Order and subsequent remedial orders, including those
20 implementing the guidelines, plans, procedures, policies and
21 evaluations set forth above, for the period until this Order is
22 terminated as set forth in the previous subsection. The amount
23 of such fees shall be determined according to law upon duly
24 noticed motion. The parties shall negotiate an order for the
25 periodic collection of attorneys fees and costs similar to that
26 filed in Madrid v. Gomez, C-90-3094 TEH.

1 H. Certification of Interlocutory Appeal

2 After a review of the parties' stipulation, the Court hereby
3 finds that the issue of whether the ADA and §504 of the
4 Rehabilitation Act apply to the programs, services and activities
5 provided by a state department of corrections to state prisoners
6 and parolees is a controlling issue of law as to which there is
7 substantial ground for difference of opinion and that an
8 immediate appeal from this Order may materially advance the
9 ultimate termination of this litigation within the meaning of 28
10 U.S.C. § 1292(b).

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12 Dated:

SEP 20 1996

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15 CLAUDIA WILKEN, JUDGE
16 UNITED STATES DISTRICT COURT
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